

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

**LIMITED OBJECTION OF IMI HUNTSVILLE LLC
TO PROPOSED CURE AMOUNT**

IMI Huntsville LLC (aka Bridge Street Town Centre (“BSTC”)), by and through its undersigned counsel, files this Limited Objection to Proposed Cure Amount reflected in the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 714]. In support of this Limited Objection, BSTC respectfully states as follows:

BACKGROUND

1. BSTC and Bed Bath & Beyond Inc. (“BB&B”) are parties to an unexpired lease of nonresidential real property (the “Lease”) of the premises (the “Premises”) located at and commonly known as Bridge Street Town Centre in Huntsville, Alabama.
2. The Lease is a lease “of real property in a shopping center” within the meaning of section 365(b)(3) of the Bankruptcy Code.

3. On April 23, 2023 (the “Petition Date”), BB&B and its referenced affiliated debtors (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), and thereby commenced chapter 11 cases in the United States Bankruptcy Court for the District of New Jersey (the “Court”). No request has been made for the appointment of a trustee or examiner, and the Debtors continue to operate their business as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On December June 13, 2023 the Debtors filed the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (the “Notice”) that includes the Lease, on Exhibit A, as a lease that may be assumed and assigned in connection with a proposed sale.

CURE OBJECTION

5. In the Notice, the Debtors’ proposed amount to cure monetary defaults under the Lease is \$19,892.14 (the “Proposed Cure Amount”).

6. The Proposed Cure Amount is not, however, the correct amount necessary to cure the existing monetary defaults under the Lease. The correct cure amount is \$59,145.30 (the “Correct Cure Amount”). The discrepancy between the Proposed Cure Amount and the Correct Cure Amount appears to stem, in large part, from the fact the Proposed Cure Amount does not reflect the 2022 Year-End tax reconciliation adjustment for which on April 28, 2023 BSTC properly billed the Debtors under the express terms of the Lease and, as such, for which the Debtors are liable.

7. Accordingly, BSTC does not consent to the Proposed Cure Amount and objects to any assumption and assignment of the Lease that does not provide for and/or pay the Correct Cure Amount in full.

8. With respect to the Correct Cure Amount, and any post-petition amounts due under the Lease, BSTC hereby reserves the right to collect all year-end adjustments or other amounts that are due and payable under the Lease, regardless of its accrual or billing date, and amounts not yet known as of the date of this Limited Objection. Because some of these charges are payable in arrears, the amounts due cannot be calculated at this time. Nevertheless, the Debtors and/or the eventual assignee will continue to be liable for all such charges as and when they come due under the Lease.

9. BSTC is also entitled to recover attorneys' fees and costs incurred with respect to the enforcement of the Lease. As a result, BSTC hereby also reserves the right to seek payment of such fees and expenses.

JOINDER

10. BSTC hereby also joins in the objections to the Debtors' requested relief filed by other landlords and parties-in-interest to the extent they are not inconsistent with this Limited Objection.

RESERVATION OF RIGHTS

11. BSTC also hereby reserves all of its rights to supplement, modify or amend this Limited Objection and make such other and further objections to any proposed assumption and assignment of the Lease until such time as a final order is entered approving the Correct Cure Amount with respect to the Lease. Nothing set forth herein shall constitute a waiver, discharge or disallowance of any and all rights, claims, causes of action and defenses that BSTC has asserted, or may assert, with respect to any of proof of claim against the Debtors. In addition, nothing set forth herein shall be construed as a waiver, release, discharge or disallowance of any and all administrative claims of BSTC against the Debtors.

WHEREFORE, BSTC respectfully requests that this Court enter an order (i) reserving BSTC's rights to all appropriate cure amounts; and (ii) granting such other and further relief as this Court deems just and proper.

Dated: June 20, 2023

THOMPSON HINE LLP

/s/ Jeremy M. Campana

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Limited Objection to Proposed Cure Amount was served this 20th day of June, 2023 electronically in accordance with the method established under this Court's CM/ECF Administrative Procedures upon all parties in the electronic filing system in this case

/s/ Jeremy M. Campana

4871-5114-7115.1